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ABSTRACT

The Personal Responsibility and Work Opportunity Reconciliation Act and Illegal Immigration Reform and Responsibility Act of 1996 revised laws governing privacy and confidentiality of information that government agencies collect from immigrants during the benefits application process. Noting that these changes evoked confusion and anxiety in the immigrant community and deterred many families from seeking benefits, this issue brief helps child advocates understand changes in confidentiality, reporting, and verification requirements in order to help state decision makers create policies that maximize access to benefit and provide outreach to immigrant communities. Following an introduction outlining the critical role that child advocates can play in ensuring that state leaders understand the parameters of the law, the brief details the four-step process to verify an applicant's immigration status: (1) determine if the program provides a federal public benefit; (2) determine whether the applicant is eligible for benefits under the programs' general eligibility requirements; (3) verify the applicant's status as a citizen, noncitizen national, or a qualified alien; and (4) verify eligibility based on requirements of the Welfare Act. The brief also details requirements for reporting to the Immigration and Naturalization Service, describes the model used by the Food Stamp Program, and discusses the confidentiality of information collected during eligibility determinations. Also noted is the application of requirements to nonprofit organizations. Finally, the brief discusses possible roles of the child advocate. A call for action by child advocates and a resource and contact list conclude the brief. (Contains approximately 20 references.) (KB)

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ISSUE Brief

National Association of Child Advocates

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ONE IN TEN: Protecting Children's Access to Federal Public Benefits Under the New Welfare and Immigration Laws

By Sheri A. Brady, J.D.

In addition to "changing welfare as we know it", the passage of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996[1] and the Illegal Immigration Reform and Responsibility Act of 1996[2] revised the laws governing privacy and confidentiality of information that federal, state, and local government agencies collect from immigrants during the benefits application process. These changes have evoked much confusion and anxiety in the immigrant community and have deterred many families from seeking benefits. This issue brief is designed to help child advocates understand the changes in confidentiality, reporting and verification requirements in order to help state decisionmakers create policies that maximize access to benefits for families and children and provide much needed outreach to immigrant communities.

Introduction

There are many kinds of mixed immigration status within low income immigrant families in the United States. Nearly ten million families in this country include at least one child who is a United States citizen and at least one immigrant parent. In some cases, one or both parents may be undocumented, ineligible for benefits and services, and at risk of deportation, while the children are eligible citizens. In other cases, the adults may be in the country legally, but ineligible for many benefits and services as a result of the new law. These parents may assume, quite incorrectly, that their children are also ineligible. In other families, only some children are eligible because some siblings are citizens and some are not. These unique familial situations seem to be jeopardizing access to services for eligible, needy children.

ONE IN TEN CHILDREN IN THE UNITED STATES LIVES IN A FAMILY WHERE AT LEAST ONE PARENT IS A NON-CITIZEN AND AT LEAST ONE CHILD IS A CITIZEN.

—URBAN INSTITUTE ANALYSIS OF THE MARCH 1997 CURRENT POPULATION SURVEY

In California, for example, one WIC program provider is collecting reports that children of immigrants who are eligible for WIC benefits are not receiving services because their parents fear that family members will risk deportation or jeopardize their immigration status if they do so. As a result, these children are not getting nutritional benefits that they need and for which they are eligible. While early reports have been from children's nutritional programs, a legitimate concern for advocates is that this trend will continue across benefits including Medicaid, Food Stamps, and Temporary Assistance for Needy Families (TANF). To avoid this, it is necessary to make sure that states are correctly implementing the changes in the law, and that immigrant communities are well informed.

Child advocates can play a critical role in ensuring that state leaders fully understand the parameters of the law. Child advocates can help state agencies and nonprofit organizations devise procedures and policies that maximize benefit use for eligible children and minimize the risk of non-citizen parents being deported. Advocates can also play an important role in publicizing the new policies in the immigrant community to ensure that parents seek benefits for which their children are eligible.

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Changes in the Collection of Immigration Information

Both the Immigration Reform Act and the Welfare Act made three major changes in how states must handle benefit applications from immigrants:

- new requirements for verification of immigration status;
- new requirements for reporting to the Immigration and Naturalization Service (INS); and,
- new provisions that may affect the confidentiality of information collected on applicants for public benefits.

These changes apply to those applying for benefits on their own behalf. *Under current interpretation of the law, immigrants applying for benefits on behalf of others —for example parents applying only for their children —are not subject to verification of their own immigration status.*[3]

Verification of Immigration Status

All federal and state agencies that administer federal public benefits must implement a uniform verification system to verify the immigration status of benefit applicants.[4] In November 1997, the Department of Justice (of which the Immigration and Naturalization Service — INS — is a part) issued an *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*[5] *(Interim Guidance)*.

The *Interim Guidance* outlines a four-step verification process for programs to verify an applicant's immigration status when he or she applies for federal public benefits. The *Interim Guidance* also makes clear that if a program currently uses the Systematic Alien Verification for Entitlements (SAVE) system[6] for immigration verification, it should continue to use that system and only refer to the *Interim Guidance* for matters not addressed under SAVE. The *Interim Guidance* does not directly address the citizenship and immigration verification requirements for state and local benefits. However, the Balanced Budget Act of 1997[7] does require the U.S. Attorney General to promulgate regulations establishing verification procedures for state and local benefits no later than 90 days after the enactment of the BBA.[8] At the time of printing, these regulations had not been issued.[9]

Verifying an Applicant's Immigration Status[10]

The verification process described below applies only to those household members actually applying for benefits. When a parent is applying only on behalf of their child, the child is subject to this process but the parent *need not supply any information about the parent's status or any other non-applicant household members*. Prior to beginning the interview, the eligibility worker should ask the applicant to identify which family members are seeking benefits. Information only on those individuals should be requested. Advocates in states that have begun to verify immigrants for federal public benefits may want to ensure that all agencies are aware of this *Interim Guidance* and encourage correct implementation.

Step One: Determine if the program in question provides a "federal public benefit". The requirement that benefit recipients be citizens, non-citizen nationals[11] or qualified aliens[12] applies only to specified "federal public benefits" that have not been exempted by the U.S. Attorney General[13] and not to all federally funded programs. Which programs are federal public benefits are determined by the federal agency that administers the program by following the statutory definition of a federal public benefit.[14]

If the program does not provide a federal public benefit covered by the Welfare Act, the benefit provider is not required to, and should not attempt to, verify an applicant's immigrant status, unless otherwise required by law, because all aliens regardless of their immigration status, are eligible for such benefits.[15]

Step Two: Determine whether an applicant is eligible for benefits under the program's general eligibility requirements. If the applicant does not meet the general eligibility requirements, there is no need to continue with the verification procedures.[16]

Step Three: Verify the applicant's status[17] as a citizen, a non-citizen national or a qualified alien. The applicant should be helped in understanding that any immigration status information given for verification can be reported to the INS. The *Interim Guidance*, however, provides important limitations on when this verification should be undertaken. Providers should not verify immigration status unless benefits are contingent on immigration status and this verification is only to be made on the status of the person who will actually be receiving the benefits. *For example, a parent only applying for benefits on behalf of his/her child is not subject to verification process; only the child should be verified.*

The *Interim Guidance* also instructs providers that they cannot delay, deny or reduce an applicant's eligibility for benefits based on the immigration status during the time it takes to verify his

or her immigration status, unless so instructed by the federal agency administering the benefit.[18]

Step Four: The final step in the process is verifying eligibility based on other immigrant requirements of the Welfare Act. If it is a program open to all qualified aliens, then there is no need for further verification, but if the program is only open to certain qualified aliens (e.g., TANF, Supplemental Security Income (SSI), Medicaid, and Food Stamps) then the worker should make sure that the applicant meets those requirements.[19]

In outlining the verification process, the Justice Department stated explicitly that if at any step in the eligibility process an agency worker determines that verification of immigration status of a person is unnecessary, the worker should not ask any further questions about immigration status. This is important because certain agencies (those administering federal housing programs, SSI and TANF) are required to report to the INS any individual that the state knows is not lawfully present in the United States. If the agency stops asking questions as soon as it knows the person is ineligible, without further determining whether the person is lawfully present in the United States, then the agency will not have any information that it may be required to report to the INS. For example, if a worker discovers that a parent, applying for benefits on behalf of self and child, is ineligible the worker should stop verifying the parent's status but should continue the process for the child.

Reporting to the Immigration and Naturalization Service

The Welfare Act requires that agencies that administer federal housing, SSI and TANF programs[20] furnish INS with the name, address, and other identifying information on any "individual who the state knows is not lawfully present in the United States."[21] This information has to be provided at least four times a year, more often if the INS requests it. The definition of the term "knows is not lawfully present in the United States" has not yet been fully established by law or regulation. In the past, this term was construed to mean knowing that an individual is under a final order of deportation.[22] Unless the federal government gives specific language on this issue, states should be encouraged to use the Food Stamp Program's model, and interpret this reporting requirement as narrowly as possible.

Although the Welfare Act has made reporting of undocumented persons mandatory, it is not necessary for benefit eligibility workers to become quasi-INS agents and ferret out illegal aliens. Keeping this in mind, benefit workers should be instructed that they are not required to, and should not, contact the INS if a household member, such as a parent or sibling of the applicant child, has stated, on the application or otherwise, that he or she is unable or unwilling to provide immigration status information. The worker should not contact INS because he or she does not "know" that the household member is under an order of deportation, which is what the law currently requires. The worker only knows that the

The Food Stamp Model for Reporting to the INS

Before the passage of the Welfare Act, only the Food Stamp Program required reporting to the INS of the presence of household members who were in violation of the Immigration and Nationality Act.[25]

The model followed by the Food Stamp Program is based on the notion that food stamp workers should not be expected to act as outreach officers of the INS, seeking clues pointing to the presence of illegal aliens. Rather, if an eligibility worker is given immigration status information voluntarily by an alien that does not clearly reflect his or her status, the worker can contact the INS, *with the permission of the alien in question, to get a verification of his or her immigration status.*

In 1983, a federal court held that the Food Stamp reporting requirement applies only to the alien members of the household who are applying for benefits.[26] Agency staff should be instructed to only verify or ask about the immigration status of family members who are applying for the benefit in question.

Under this model, the agency determines at the beginning of the process which persons are applying for the benefit in question to avoid asking any questions about the immigration status of those not applying. Agencies should also develop applications that list the eligibility requirements for the benefit program in question. The application tells those who are not eligible to discontinue filling out the form as they are not eligible. In ending the questions at this point, the agency does not gather any information that needs to be reported to INS, under even the broadest interpretation of the reporting requirements. The agency has relieved itself of the need to verify or report a non-applicant's immigration status.[27]

household member is refusing or unable to provide information.

States should be encouraged to adopt policies that recognize explicitly that just because an alien is ineligible for federal public benefit programs does not mean that he or she is present illegally in this country. They may be here legally, "under color of law"[23], or unbeknownst even to them they may be entitled to an immigration status, such as political asylum, that would preclude a final order of deportation. In the same vein, immigrants who are ineligible for federal public benefits, including some that are lawfully present as well as those who are undocumented, are still eligible for many emergency services.[24] States should be encouraged to create a category, "eligible for emergency services", and formally recognize that many people will fall into this category without being here illegally. In doing so, the state should also make it clear that if a person checks this category they should not be asked for immigration documentation. The state policy should explicitly state that information about people in this category is not reportable information and state agency workers should be trained in this policy.

Confidentiality of Information Collected During Eligibility Determinations

Congress prohibited any federal, state or local entities or officials from restricting government entities' or officials' ability to exchange information with the INS.[28] In addition, a federal, state or local government entity cannot be restricted in its efforts to maintain records or exchange information with any other agency.[29] There has been some confusion about the implications of this provision.

This means that no government agency can promise its clients, patients, potential witnesses or others that immigration information will be kept confidential. Agencies, however, can and should restrict the immigration information that workers collect. Agencies can also regulate the way the information is recorded and handled. Agencies should be careful to ask only those questions for which they must have answers to determine the eligibility of the applicant, because they might have to turn information they receive over to the INS. One model to minimize the collection of unnecessary information is the one established by the consent decree in *Doe v. Coler* (formerly *Doe v. Miller*, see box about Food Stamp Model).[30]

This provision only applies to information about an individual's immigration status, not other information such as receipt of benefits. HHS recently made this clear in memos to State TANF and Medicaid Directors, stating that even after the passage of the Welfare Act, state agencies are not permitted to disclose to the INS that a person is receiving or has received benefits, because this would violate the Social Security Act's privacy rules.[31] This means that parents need not fear that information about their or their children's receipt of benefits will be reported (see box about "Public Charge").

"PUBLIC CHARGE"

Advocates should be aware that many immigrants are also afraid to seek out or receive benefits for which they or their children may be eligible for fear of jeopardizing their immigration status by being labeled a public charge. Public charge is a term used by the INS to describe immigrants who have been or will become dependent on public benefits.[34] If an immigrant is deemed likely to become a public charge, it could interfere with his or her ability to become a legal permanent resident or petition to bring relatives to the United States. Although using benefits does not affect an immigrant's ability to naturalize unless fraud is involved, many immigrants have this fear. The traditional test to determine whether a person will be a public charge looks at the applicant's future ability to care for self and family, taking into account the person's total circumstances. The past use of benefits is not determinative. Immigrants should be encouraged to speak with immigrant advocates in their community if they fear being deemed a public charge. Advocates may also want to monitor information that the INS provides on public charge. In some instances, INS agents have been reported to be providing incorrect information, and even advising immigrants to withdraw from benefit programs or to repay benefits.

Application of These Requirements to Nonprofit Organizations

The Immigration Reform Act establishes that nonprofit charitable organizations have no immigration status verification requirements under the Welfare Act.[32] Nonprofit charitable organizations do not have to ask immigrants any questions about their immigration status to supply immigrants with the organization's services or benefits, even if those benefits are otherwise subject to immigration restrictions. This exemption is limited to immigration status verification requirements imposed by Title IV of the Welfare Act and to those instances in

which the nonprofit charitable organization would be required by Title IV to engage in immigration status verification. If the program has immigration status verification requirements unrelated to Title IV, the organization must abide by them. While a nonprofit does not have to verify, it does have to comply with determinations made by a non-exempt entity such as a state agency performing immigration status verification for benefits. For example, if a nonprofit agency is providing TANF-funded services, such as transportation, it does not have to verify the recipient's immigration status but it does have to abide by a verification determination of a state agency.

The *Interim Guidance* also defines which nonprofit charitable organizations are exempt from the verification process. To be exempt, an organization must be both non profit and charitable. For this purpose, an organization is nonprofit if it is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders. An organization is charitable if it is organized and operated for charitable purposes, employing that term's generally accepted legal sense.[33]

A nonprofit that does not verify immigration status cannot be penalized for providing federal public benefits to an individual who is not a citizen, non-citizen national or qualified alien, except when it does so in violation of independent program requirements for immigration status verification or in the face of an immigration status verification made by a non-exempt entity (e.g., a state agency). If a nonprofit does decide to verify immigration status, it must follow the four-step process outlined above. If a nonprofit decides to verify immigration status, any request made to the INS by that organization must be accompanied by a written consent of the individual whose immigration status is to be verified to the release of information to a nongovernmental entity. In most cases nonprofit agencies should be encouraged not to verify immigration status.

It is important that nonprofits not keep records of immigration status information on clients, especially if this information is not needed to provide the client with the organization's services. Although nonprofits are not required to verify or report immigration status at this time, it is possible that in the future this could change and that under some circumstances they could be compelled to hand over information in their records to the INS. It is therefore better not to keep such information.

Children in Families with at Least One Non-citizen Parent and at Least One Citizen Child

March, 1997

These families could be adversely affected by improper verification procedures if they applied for benefits for their eligible children. Many families have both citizen and immigrant children. The numbers below include immigrant siblings of citizen children in these families. These numbers do not include families where all children are immigrants. Many immigrant children are also eligible for benefits and could be adversely affected by improper verification procedures.

	United States	California	New York	Illinois	Texas	New Jersey	Florida
Number of children in families with at least one non-citizen parent and at least one citizen child	7,341,888	2,788,399	759,677	346,716	872,928	247,409	464,313
As a percentage of all children	10.2%	30.6%	15.7%	10.6%	15.6%	13.1%	13.4%
Number of children in families with at least one non-citizen parent and at least one citizen child below 200% of the poverty level	4,842,543	1,998,596	476,477	189,764	688,073	117,105	270,561
As a percentage of all children below 200% of poverty level	15.4%	45.8%	21.1%	15.2%	24.7%	20.7%	16.0%

Source: Urban Institute calculations from March 1997 Current Population Survey (results are weighted.) Date 3-10-1998

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The Role for Child Advocates

Armed with an understanding of these changes in the law, child advocates should work in conjunction with immigrant advocates in the community to make sure that any policies work best for the immigrants in your community. Advocates in states that have started verification of applicants should make sure that agencies that administer public benefits are aware of the *Interim Guidance* and are implementing the verification process correctly. In doing this, advocates should remind the agencies that the verification requirements only apply to those immigrants who are applying for benefits. If a parent is applying for benefits for his/her child then only the child should be subjected to the verification process.

Advocates should then work with organizations that work with the local immigrant community to publicize the policy as well as immigration-related eligibility requirements for important children's benefits and services. Organizations that work with immigrants may want to assist immigrants in determining which family members are eligible for which programs. They also may want to advise immigrants to tell application workers that they are unable or unwilling to provide documentation on behalf of ineligible members, rather than to state that they are undocumented. The help of immigrant advocates will help immigrants overcome the fear and anxiety that surrounds the benefits application process in light of the Welfare Act and the Immigration Reform Act (see "Public Charge" box). In the declaration required by step three of the verification process, immigrants should be advised to simply make the declaration on behalf of those family members who meet the listed immigration status requirements, and provide no information about the immigration status of other family members. In addition, advocates may want to monitor this population to see if awareness is growing and if children are getting the services for which they are eligible. If your organization does not have the resources to do this monitoring alone, it may be possible to work with other organizations in the area interested in this issue.

Advocates can also use the nonprofit organizations exemption from the verification and reporting requirements to help immigrants determine their eligibility before they even go to apply for benefits, thus further sheltering them from the verification and reporting requirements. This can be done in a variety of ways. For example, local government should consider paying for immigrant advocates to sit in county welfare offices so that immigrants can show the advocates their information before seeing an eligibility worker. The advocate can then tell the immigrant, and the eligibility worker, which family members are qualified and thus for which family members an application should be processed. The advocate can also explain the verification and reporting process to the applicant. In counties that are not willing to go as far as this, advocates can seek other funding to do this. Immigrant advocates can also encourage immigrants to work with nonprofit agencies that are exempt from the reporting requirement to figure out their eligibility status before they go into the welfare offices.

Conclusion

The immigrant community has been hard hit by the policy changes in the Welfare Act and the Immigration Reform Act. As a result of these changes, needy children — particularly children of immigrants — are in danger of falling through the cracks. We in the child advocacy community understand that many of the benefit programs provide children, not with supplemental services, but with survival benefits. We hope that this issue brief has alerted you to some of the chilling effects of these new statutes and identified critical roles that you can play. Children of immigrants need the support and intervention of the child advocacy community. The National Association of Child Advocates urges child advocates across the country to work with immigrant advocates to ensure that children of immigrants receive those benefits for which they are eligible.

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Resource & Contact List

Available from the NATIONAL IMMIGRATION LAW CENTER, 1102 S. Crenshaw Boulevard, Suite 101, Los Angeles, CA 90019, 213-938-6452.

- *Immigrants & Welfare: Statutes, Regulations & Administrative Source Materials, 1998.* This source book includes all the federal statutes, regulations and administrative materials issued since the changes in 1996, and key federal and state court decisions. The price is $35 for nonprofit agencies and $50 for all others. California purchasers should add 8.25% sales tax.

All of the following resources listed and many more are contained in *Immigration & Welfare Resource Manual: 1998 edition.* This manual includes summaries and analyses of federal law and state laws, as well as materials analyzing a wide range of program issues including immigrant (and citizen children of immigrant parents') access to TANF, Medicaid, food stamps, SSI, housing, and cross cutting issues such as verification of immigration status. The cost is $50.

- *Summary of the Immigrant Provisions of the Balanced Budget Act (H.R. 2015).*
- *Summary of Significant Federal Regulatory/Administrative Developments.*
- *Alien Eligibility for Federal Benefits.* Done in conjunction with Catholic Legal Immigration Network, Inc.
- Immigrant Eligibility for Public Benefits—CHART.
- *State and Local Policies on Immigrants and Public Benefits—Responses to the 1996 Welfare Law* by Tanya Broder.
- *States Providing Benefits to Immigrants Under 1996 Welfare & Immigration Laws*—CHART.
- *The Public Charge Ground of Inadmissibility.* Done in conjunction with Catholic Legal Immigration Network, Inc.
- *Verification, Reporting, and Confidentiality.*

Available from the FOOD RESEARCH & ACTION CENTER, 1875 Connecticut Ave., NW, Suite 540, Washington, DC 20009, 202-986-2200.

- *Fact Sheet on Food Stamp Immigration Restrictions.*
- *State Responses to the Food Assistance Gap* prepared in conjunction with Second Harvest.
- *Advocacy on Immigrant Issues in Child Nutrition Programs.*
- *Immigration Issues in Welfare Reform: The Child and Adult Care Food Program.*

Available from the CENTER ON BUDGET AND POLICY PRIORITIES, 820 First Street, NE, Suite 510, Washington, DC 20002, 202-408-1080.

- *Food Stamp Eligibility in Immigrant Households: Ineligible Immigrants' Income and the Role of Sponsor Deeming.*

Available from the NATIONAL HEALTH LAW PROGRAM, INC., 1101 14th Street, NW, Suite 405, Washington, DC 20005, 202-289-7661.

- *Not Qualified Immigrants' Access to Health Service after the Welfare Law* by Claudia Scholsberg.

Available from the NATIONAL HOUSING LAW PROJECT, 2201 Broadway, Suite 815, Oakland, CA 94612, 510-251-9400.

- *Non-Citizens' Rights to Housing Assistance: The 1996 Statutory Amendments and HUD's Implementing Regulations.*

Available from the NATIONAL EMPLOYMENT LAW PROJECT, 55 John Street, 7th Floor, New York, NY 10038, 212-285-3025.

- *Immigrants' Rights to Worker Benefits Under the Federal Welfare Bill* by Maurice Emsellem and Monica Hallas, Greater Boston Legal Service.

Available from COLUMBIA LEGAL SERVICES, 101 Yesler Way, Suite 300, Seattle, WA 98104, 206-464-5933.

- *Memorandum on Balancing Privacy Protections with Reporting Sections of PRWORA* by Becky Smith. This memo also contains draft language for an Executive Order on protecting the privacy rights of Washington state residents.

Available from NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM, 1001 Connecticut Avenue, NW, Suite 522, Washington, DC 20036, 202-296-2300.

- *Community Education Manual on Welfare, Immigration and Naturalization 1997-1998.* This manual contains materials aimed at immigrants to explain the changes in the Welfare and Immigration Laws.

Additional Contacts

CATHOLIC LEGAL IMMIGRATION NETWORK, INC
401 Michigan Avenue, NE
Washington, DC 20017
202-635-2556

COUNCIL OF JEWISH FEDERATIONS
1640 Rhode Island, NW
Suite 500
Washington, DC 20036
202-785-5900

IMMIGRANT LEGAL RESOURCE CENTER
1663 Mission Street
Suite 602
San Francisco, CA 94103
415-255-9499

NATIONAL COUNCIL OF LA RAZA
1111 19th Street, NW
Suite 1000
Washington, DC 20036
202-785-1670

NATIONAL IMMIGRATION FORUM
220 I Street, NE
Suite 220
Washington, DC 20002
202-544-0004

U.S. CATHOLIC CONFERENCE
3211 4th Street, NE
Washington, DC 20017
202-541-3000

Endnotes

1 Pub. L. No. 104-193 (August 22, 1996), hereinafter Welfare Act.
2 Pub. L. No. 104-208 (September 30, 1996), hereinafter Immigration Reform Act.
3 62 Fed. Reg. 61347.
4 Welfare Act §432(a) as amended by Immigration Reform Act §504.
5 62 Fed. Reg. 61344.
6 SAVE is the computerized system that major federal programs have long used to verify immigration status. Programs that use or used SAVE: Aid for Families with Dependent Children, Medicaid, Food Stamps (now a state option), Unemployment Insurance, Title IV education loans and grants, housing programs, and some Social Security offices administering Title II Social Security benefits.
7 Pub. L. No. 105-53 (August 5, 1997), hereinafter BBA.
8 BBA §5572.
9 To our knowledge California is the only state that has attempted to limit immigrants' use of a variety of services, including state and local benefits. If your state is thinking of doing this or is doing so, contact NACA or the National Immigration Law Center to discuss what verification procedures may apply.
10 This four step procedure is outlined in the Interim Guidance from the U.S. Department of Justice.
11 A person born in an outlying possession of the United States (America Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen nationals.
12 Qualified aliens include: aliens lawfully admitted for permanent residence; aliens granted asylum; aliens granted refugee status; aliens paroled into the U.S. for at least one year; aliens whose deportation or removal is being withheld; and aliens granted conditional entry. Also included are aliens who have been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to or acquiesced in this treatment and it is determined that there is a substantial connection between the treatment and the need for benefits (this extends to the parent or child of such a person).
13 The Attorney General has issued a preliminary order exempting certain programs. Attorney General Order No. 2049, 61 FR 45,985 (1996). A final order is pending.
14 "Federal public benefit" includes any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States. Welfare Act §401(c)(2)(B). Regulatory interpretation is expected soon. Programs whose status remains uncertain include Head Start, Child Care and Maternal Child Health Programs.
15 62 Fed. Reg. 61346.
16 62 Fed. Reg. 61346-61347.
17 To determine an applicant's status, the Guidance instructs application workers to first ask the applicant for a written declaration, under penalty of perjury, that the applicant is a U.S. citizen, national or qualified alien. Then if, and only if, the applicant has indicated that he/she holds such a status, the agency may request documentation. U.S. citizens or nationals may be asked to provide different degrees of additional documentation, depending on the benefit being applied for. Qualified aliens have more specific documentary requirements. The documents that can be offered as proof are listed in an appendix to the *Interim Guidance*. They can be found at 62 FR 61362-61410.
18 62 Fed. Reg. 61347.
19 62 Fed. Reg. 61349.
20 An agency might administer more than one federal program, but is only required to report on people applying for these three programs.
21 Welfare Act §404 as amended by the BBA §5564.
22 Memorandum of Legal Services Corporation General Counsel to Legal Services Corporation Project Directors (December 5, 1979). *See also* California Food Stamp Regulations, DSS Manual-FS §63-405.61 (November 12, 1996) (reporting requirement triggered only by discovery of a final order of deportation).
23 An old term, arising from prior Medicaid law, referring to immigrants who the INS knew were in the country without immigration status, but were not subject to deportation. Before passage of the new law they were eligible for many public benefits.
24 Including emergency Medicaid, crisis counseling and intervention programs, short-term shelter or housing assistance, and emergency nutritional programs. Att'y Gen. Order No. 2049-96, 61 Fed. Reg. 45985 and Welfare Act § 402.
25 7 U.S.C. § 2020(e)(17).
26 *Doe v. Miller*, 573 FSupp. 461 (N.D. Ill. 1983).
27 Advocates should consult with the immigration community to decide what information about the agency's reporting requirements should be included on the form. The form can also state explicitly that immigration status information that is given to the agency may be given to the INS if the INS so requests. Agency staff can also be trained to inform potential applicants of these changes. There are pros and cons to this approach. On one hand, if immigrants are given this information they will be restrained from volunteering information that may be reported. On the other hand, it may scare off some immigrants from applying for benefits that their children are eligible. The most important thing is that caseworkers should not be asking questions that elicit reportable information unless necessary for an eligible person to get his/her benefits.
28 Immigration Reform Act §642.
29 *Id.*
30 Available from NACA.
31 Memo from Lavinia Limón, Department of Health and Human Services, to State TANF Directors (December 17, 1997); Memo from Sally K. Richardson to State Medicaid Directors (December 17, 1997).
32 Welfare Act §432 as amended by Immigration Reform Act §508.
33 62 Fed. Reg. 61345.
34 8 U.S.C. § 1182(a)(4).

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